THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.15062 OF 1995

Date: 26th September 2006

Between:
The Management of Visakhapatnam Port Trust,
Visakhapatnam, rep. by its Dy.Secretary.

.... Petitioner

And

1. The Port & Dock Employees Association,
   rep. by its General Secretary, Visakhapatnam,
   and another.

.... Respondents.

* * *

ORDER:

This writ petition is filed by the management being aggrieved by the Award dated 15th March, 1994, passed in Industrial Dispute No.25 of 1992 on the file of the Industrial Tribunal-I, Chandralok complex, Hyderabad.

2. It appears that the first respondent association raised a dispute and the same was referred to the Industrial Tribunal under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 (for short 'the Act'), for adjudication of following issues.

1) Whether the action of the Management of Visakhapatnam Port Trust denying promotion to the

post of Yard Foreman basing upon recruitment rules to technical staff i.e., Coupling Porter Grade-I and shunting Jamedar is justified? If not, to what relief the workmen are entitled?

2) Whether the action of the management of Visakhapatnam Port Trust denying to issue written order by superiors ore handling complex operational staff working under them is justified? If not, to what relief the workmen are entitled?

3) Whether the action of the management of Visakhapatnam Port Trust to deny promotion to the post of Grade-III Welder to Sri P.Sanyasi, Khalasi ore handling complex, is justified? If not, to what relief the said workman is entitled?

However, issue No.2 was not pressed, therefore, the same was not entertained by the Tribunal. Insofar as issue Nos.1 and 3 it was answered in favour of the association.

3. The first issue is with regard to denying promotion to the post of Yard Foreman basing upon recruitment rules to technical staff i.e., coupling Porter Grade-I and Shunting Jamedar. It was the case of the union that as per the Visakhapatnam Port Employees Recruitment Regulations, the post of Yard Foreman is to be filled up by promotion from the category of Chief Shunting Master or equivalent rank with five years experience and also from Clerks (Trains). The ratio is fixed at 1: 2. When six vacancies arose for the post of Yard Foreman, all of them were filled up by promoting clerks (Trains). In this regard, the management stated that since there were no eligible candidates available from among the Chief Shunting Masters, all the six vacancies were filled up

with that of Clerks. There is no other grievance for any Chief Shunting Masters, therefore, such disputes ought not to have been entertained and answered in favour of the association. However, it was the finding that number of Chief Shunting Masters having eligibility was available when six posts of Yard Foreman became vacant. The learned counsel for the petitioner of course, disputed it. It is further noticed that it is not necessary that Chief Shunting Masters should be upgraded cadre as on the date of vacancy and that promoting Clerks (Trains) is illegal. I am of the opinion that the findings reached by the Tribunal cannot be said to be either unreasonable or illegal. When two feeder posts are available for filling up of vacancies at the ratio of 1:2 and when a particular category people even if they are not eligible, the management is not supposed to fill up all the vacancies by considering a particular category i.e., Clerks (Trains).

4. Insofar as the third reference it was with regard to denying promotion to the post of Grade-III Welder to P.Sanyasi, Khalasi. It is stated that P.Sanyasi, Khalasi, was appointed with effect from 29.5.1980, while one Ch.Appa Rao, Khalasi, was appointed with effect from 19.6.1980. P.Sanyasi as well as Ch.Appa Rao were subjected to trade test for being promoted to the further post on 16.5.1983 and both of them have passed the test. P.Sanyasi was not promoted whereas Ch.Appa Rao was promoted. The seniority of P.Sanyasi was not taken into consideration on the ground that he was appointed on ad-hoc basis, whereas Ch.Appa Rao was appointed on regular basis. This was the only contention of the management. Therefore, the Tribunal came to the conclusion that

the action of the management in denying the promotion to Grade-III Welder post to P.Sanyasi, is unjustified. I am of the opinion that the Tribunal has not committed any error in coming to such a conclusion and directing the management to promote Mr.P.Sanyasi, Khalasi, as Grade-III Welder with effect from 16.5.1983. However, in the facts and circumstance of the case, the Award passed by the Tribunal against Issue No.3 requires to be modified to the following extent.

> The respondent-management is directed to promote P.Sanyasi, Khalasi, as Grade-III Welder with effect from 16.5.1983, but he is not entitled to any back wages etc., till 30th of September 2006. From 01st October 2006, onwards he is entitled to claim all the increments etc., in the post of Grade-III Welder with effect from 16.5.1983.

5. With the above modification, the writ petition is dismissed. No order as to costs.

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C.V.RAMULU, J.

Date: 26th September 2006.
BSB